Supreme Court, U.S.
FILED
APR 24 1996
CLERK

No. 95-1559

In The
Supreme Court Of The United States
October Term, 1995

WENDY R. HICKAM,
Petitioner,

v.

STATE OF CONNECTICUT,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

Counsel of Record:

CAROLYN K. LONGSTRETH
Assistant State's Attorney
Appellate Bureau
Office of the Chief
State's Attorney
300 Corporate Place
Rocky Hill, CT 06067
(860) 258-5807

QUESTION PRESENTED

WHETHER CERTIORARI IS WARRANTED TO REVIEW A DECISION OF THE CONNECTICUT SUPREME COURT HOLDING THAT THE ADMINISTRATIVE SUSPENSION OF PETITIONER'S DRIVERS LICENSE AFTER HER ARREST FOR DRUNK DRIVING WAS REMEDIAL AND THEREFORE NOT PUNISHMENT FOR DOUBLE JEOPARDY PURPOSES ?

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE. 1

A. Procedural History 1

B. Basis for Dismissal by Trial Court 1

C. Disposition Reached By The Connecticut Supreme Court. 3

REASONS TO DENY PETITION 5

A. The Decision Below Does Not Conflict With *Halper*, *Austin* and *Kurth Ranch* 5

B. The Conflict Between the Decision Below And *United States v. Ursery*, Will Be Resolved When the Court Reviews The Latter Case 8

C. The Importance Of this Case Is Diminished By The Unanimity Of State And Federal Courts With Respect To The Remedial Character of Regulatory Sanctions Involving Loss Of License Or Debarment 8

CONCLUSION 13

TABLE OF AUTHORITIES

PAGE

CASES

Alexander v. La. State Bd. of Medical Examiners, 644 So.2d 238 (La. Ct. App. 1994) 9

Austin v. United States, 509 U.S.___, 113 S.Ct. 2801 (1993) 1

Baldwin v. DMV, 35 Cal. App. 4th 1630 (Ct., *rev. denied*, Sept. 26, 1995 (Ct. App. Cal. 1995) 9

Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861(1979) 2, 11

Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180 (1932) 3, 4

Butler v. Dept. of Public Safety and Corrections, 609 So.2d 790 (La. 1992) 10

Chukwarah v. United States, 813 F.Supp. 161 (E.D.N.Y. 1993) 9

Department of Revenue of Montana v. Kurth Ranch,
511 U.S. ___, 114 S.Ct. 1937 (1994) 1

Ellis v. Pierce, 230 Cal. App. 3d 1557
(Ct. App. 1991) 9

Ex Parte Arnold, 916 S.W.2 d 640
(Tex. Ct. App. 1996) 10

Freeman v. State, 611 So. 2d 1260
(Fla. Dist. Ct. App. 1992), *review denied*,
623 So. 2d 493 (1993)(per curiam),
cert. denied, __ U.S. __, 114 S.Ct. 415 (1993) 10

Heddan v. Dirkswagen, 336 N.W.2d 54 (Minn. 1983) . . . 7

Johnson v. State, 622 A.2d 199 (Md. Ct.
Spec. App. 1993) 10

Kennedy v. Mendoza-Martinez, 372 U.S. 144,
83 S.Ct. 554, 9 L.Ed.2d 644 (1963) 2

Loui v. Board of Medical Examiners,
889 P.2d 705 (1995) 9

Luk v. Com., 658 N.E.2d 664 (Mass. 1995) 10, 11

Mackey v. Montrym, 443 U.S. 1,
99 S.Ct. 2612 (1979) 7, 11

Malone v. State, 864 S.W.2d 156
(Tex. Ct. App. 1993) 9

Manocchio v. Kusserow, 961 F.2d 1539
(11th Cir. 1992) 9

Moser v. Richmond City Bd. of Commrs.,
428 S.E.2d 71 (Ga. 1993) 9

Nolen v. State, 1995 WL 577590 (Ga. App.),
review denied, January 26, 1996 . . . . . 9, 10

People v. Dvorak, 658 N.E. 869 (Ill. App. Ct. 1995) . . . 10

Schillerstrom v. State, 885 P.2d 156
(Ariz. Ct. App. 1994) 9

Snow v. Superior Court, 903 P. 2d 628
(Ariz. App. 1995), *rev. denied*, Sept. 26, 1995 9

State v. Arnold, 909 P.2d 1270 (Ct. App. Utah 1996) . . 10

State v. Becker, 669 A.2d 548 (Vt. 1995) 10

State v. Funke, 531 N.W.2d 124 (Iowa 1995) 10

State v. Hansen, 542 N.W. 2d 424 (Neb. 1996) . . . 10, 11

State v. Hanson, 532 N.W. 2d 598
(Minn. Ct., *aff'd*, 543 N.W.2d 84 (Minn. 1996)
App. 1995) 7, 10, 11, 12

State v. Higa, 897 P.2d 928 (Ha. 1995) 10

State v. Jones, 666 A.2d 128 (Md. Ct. App. 1995), *cert. denied*, __ S.Ct. __, 1996 W.L 26460 10

State v. Kennedy, 904 P.2d 1044 (N.M. 1995) 10, 12

State v. Mayo, 915 S.W. 2d 758 (Mo. 1996) 10

State v. Mertz, 907 P.2d 847 (Kan. 1995) 10, 12

State v. Miller, 1995 WL 275770 (Ohio Ct. App.) 10

State v. Murray, 644 So. 2d 533 (Fla. Ct. App. 1994) . . 10

State v. Nichols, 819 P.2d 995 (Ariz. Ct. App. 1991) 9

State v. Phillips, 909 P.2d 882 (Or. App. 1996) 10

State v. Savard, 659 A.2d 1265 (Me. 1995) 10, 12

State v. Sims, 1995 WL 493291 (Ohio Ct. App.) 10

State v. Strong, 605 A.2d 510 (Vt. 1992) 10

State v. Talavera, 1995 WL 644091 (Idaho) 10

State v. Walker, 646 A.2d 209 (Conn. App. Ct. 1994) . . . 9

State v. Young, 530 N.W.2d 269 (Neb. App., *aff'd*, 1996 W.L. 100025 (Neb.) 1995) 10, 12

State v. Zerkel, 900 P.2d 744 (Alaska App. 1995) 5, 9, 11, 12

State v. Zimmerman, 539 N.W. 2d 49 (N.D.1995) . . 10, 12

Tench v. Com., 462 S.W.2d 922 (Va. Ct. App. 1995) . . 10

United States v. Furlett, 974 F.2d at 839
(7th Cir. 1992) 9

United States v. $405,089.23 in United States Currency,
cert. granted, __ U.S. __, 116 S.Ct. 762 (1996)
56 F.3d 41 (9th Cir. 1995) 8

United States v. Assortment of 89 Firearms,
465 U.S. 354 (1984) 11

United States v. Bizzell, 921 F.2d 263
(10th Cir. 1990) 9, 12

United States v. Halper, 490 U.S. 435 (1989) 1

United States v. Hudson, 14 F.3d 536
(10th Cir. 1994) 8, 12

United States v. Newby, 11 F.3d 1143 (3d Cir. 1993),
cert. denied, ___ U.S. ___, 115 S.Ct. 111 (1994) 8

United States v. Ursery, 59 F.3d 568 (6th,
cert. granted, __ U.S. __,
116 S.Ct 762 (1996) Cir. 1995)

8

United States v. Woods, 949 F.2d 175 (5th Cir. 1991),
cert. denied, 503 U.S. 961, (1992) 9

STATUTES

Conn. Gen. Stat. § 14-227a 1

Conn. Gen. Stat. § 14-230 1

CONSTITUTIONAL PROVISIONS

U.S. Const., Amend. V 5

U.S. Const., Amend. VIII 4, 7

STATEMENT OF THE CASE

A. Procedural History

The petitioner was charged in a two-count information with operating a motor vehicle under the influence of alcohol; Conn. Gen. Stat. § 14-227a; and failure to drive upon the right. Conn. Gen. Stat. § 14-230. Relying on *United States v. Halper*, 490 U.S. 435 (1989) [hereinafter *Halper*], *Austin v. United States*, 509 U.S.___, 113 S.Ct. 2801 (1993)[hereinafter *Austin*] and *Department of Revenue of Montana v. Kurth Ranch*, 511 U.S. ___, 114 S.Ct. 1937 (1994)[hereinafter *Kurth Ranch*], the petitioner moved to dismiss the charge of operating under the influence. He argued that trial on that charge was jeopardy-barred because the Commissioner of Motor Vehicles had previously suspended her driver's license for 90 days pursuant to Connecticut General Statutes § 14-227b.

The trial court granted the petitioner's motion to dismiss. Thereafter, the respondent appealed to the Connecticut Supreme Court, which reversed the ruling of the trial court in a decision issued on December 26, 1995.

The petitioner timely filed a petition for a writ of certiorari.

B. Basis for Dismissal By Trial Court

The trial court construed *Halper*, *Austin* and *Kurth Ranch* as holding that a governmental sanction imposed in a civil proceeding is punishment for double jeopardy purposes if it has any deterrent purpose or effect and cannot be characterized as

"solely remedial". In reaching this view , the trial court relied upon the following passage of *Halper*:

> We have recognized in other contexts that punishment serves the twin aims of retribution and deterrence. *See, e.g. Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168, 83 S.Ct. 554, 567, 9 L.Ed.2d 644 (1963)(these are the "traditional aims of punishment"). Furthermore, "[r]etribution and deterrence are not legitimate nonpunitive governmental objectives." *Bell v. Wolfish*, 441 U.S. 520, 539 n.20, 99 S.Ct. 1861, 1874, n.20 (1979). From these premises, it follows that a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment as we have come to understand the term. *Cf.*, *Mendoza-Martinez*, 372 U.S., at 169, 83 S.Ct. at 568 (whether sanction appears excessive in relation to its nonpunitive purpose is relevant to determination whether sanction is civil or criminal). We therefore hold that under the Double Jeopardy Clause a defendant who already has been punished in a criminal prosecution may not be subjected to an additional civil sanction to the extent that the second sanction may not fairly be characterized as remedial, but only a deterrent or retribution.

109 S.Ct. at 1902 [emphasis added]. See Pet. at B-3 through B-4.

The trial court then concluded, based on legislators' references to the deterrent purpose of the administrative

suspension procedure at the time it was enacted, the strong resistance of defendants to license suspension in pretrial negotiations, and the impact of a suspension upon defendants' livelihood, that a 90-day administrative license suspension constitutes punishment for double jeopardy purposes. It refused to consider whether the sanctions punished the same offense under *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180 (1932). Pet. at B-7 through B-11.

C. Disposition Reached By The Connecticut Supreme Court

The Connecticut Supreme Court found error in the trial court's conclusion that, under *Halper*, a civil sanction must be "solely remedial" in order to avoid the label of "punishment" for double jeopardy purposes. Instead, citing *Halper*'s express holding, decisions from other states rejecting the trial court's interpretation, and precedents characterizing most regulatory sanctions as remedial, the Court articulated the standard for punishment as follows:

> "A civil or administrative sanction that serves a legitimate remedial purpose and is related rationally to that purpose does not give rise to a double jeopardy violation even if the sanction has some deterrent effect. Conversely, no matter what its label, a sanction or portion thereof that seeks only to punish triggers the protection of the double jeopardy clause."

Pet. App. A-7 through A-10.

The Connecticut Supreme Court did not find either *Austin* or *Kurth Ranch* to be apposite. It noted that *Austin* concerned

the excessive fines clause of the eighth amendment and relied heavily on the historically punitive underpinnings of forfeiture proceedings. While the Court relied upon *Kurth Ranch* as support for its view that deterrence is not correctly equated with punishment, it found the decision to be otherwise limited by the specific characteristics of the Montana tax under review. Pet. App. at A-7.

The Court then analyzed Connecticut's provision for administrative driver's license suspension. Based on the legislative history, it found the procedure to be rationally related to the remedial purpose of protecting the public from drivers who demonstrate, by their lawful arrest, a propensity to drive while under the influence of alcohol. While the Court acknowledged the legislature's deterrent purpose in enacting the statute, it deemed this objective to be secondary and outweighed by the primary purpose of advancing highway safety. The Court further found that (1) the ninety day period of suspension was not disproportionate to the public safety purpose, (2) the required delay of the suspension for thirty days after arrest did not rebut the act's safety purpose since its purpose was to accommodate the driver's interest in a pre-suspension hearing, and (3) it was not unreasonable to limit the administrative suspension to a period of ninety days.[1]

---

[1] The Connecticut Court did not reach the applicability of *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180 (1932), nor did it address the respondent's argument that *Halper* should be limited to its facts. If certiorari is granted, the respondent will renew the latter argument.

REASONS TO DENY THE PETITION

A. The Decision Below Does Not Conflict With *Halper*, *Austin* and *Kurth Ranch*

Although the Connecticut Supreme Court did not apply the portion of *Halper* that suggests a civil sanction must be "solely remedial" in order to avoid implicating the fifth amendment, its decision is consistent with *Halper* read as a whole.

Halper recognized that "civil proceedings may advance punitive as well as remedial goals, and, conversely, that both punitive and remedial goals may be served by criminal penalties." *Halper*, 109 S.Ct. at 1901. *Accord Austin v. United States*, 113 S.Ct. at 2806. It follows that a civil sanction may have a deterrent or even a retributive component without necessarily becoming punitive for double jeopardy purposes. Indeed, *Halper* expressly characterized punishment in the context of civil sanctions as a question of degree. It acknowledged that the determination is not "an exact pursuit" and found that the fine imposed on the respondent was punishment because it "cross[ed] the line" between remedy and punishment. 109 S.Ct. at 1902. The *Halper* Court explained that the civil fine at issue was punishment because it had "no rational relation" to its compensatory purpose, repeatedly using such phrases as "extreme", "divorced from any remedial goal", "exponentially greater", "overwhelmingly disproportionate" and "tremendous disparity". 109 S.Ct. at 1899-1903.[2]

---

[2] Kurth Ranch also referred to punishment generally as a matter of degree, stating "at some point, an exaction labeled as a tax approaches

(continued...)

Halper's reference to civil sanctions that are "solely remedial" is explained by its factual context, an action by the government for money damages. The language in question merely recognized that, where the amount of the government's recovery was significantly greater than the estimated damages, the additional assessment had no apparent purpose other than retribution or deterrence and the fine as a whole could not be considered entirely remedial. *Halper*'s actual holding, however, parses the fine into the compensatory and punitive portions, invalidating only the latter.

Since administrative license suspension is not a monetary penalty susceptible of such division, the Connecticut Supreme Court properly looked to *Halper*'s broader language to define punishment in the civil context. Its conclusion that a civil sanction is not punishment if it "serves a legitimate remedial purpose and is related rationally to that purpose" is entirely in accord with *Halper*'s view that a civil sanction will not be deemed punishment unless it is excessive or disproportionate in relation to the statute's remedial purpose.

The decision of the Connecticut Supreme Court also does not conflict with *Austin* or *Kurth Ranch*. Both *Austin* and *Kurth Ranch* concern monetary penalties which, as explained above, may be readily divided and categorized as "solely" remedial or punitive.

---

[2](...continued)
punishment, and our task is determine whether Montana's drug tax crosses that line." 114 S.Ct. at 1946 [emphasis added].

Although *Austin* quoted the portion of *Halper* suggesting that civil sanctions must be "solely remedial", the issue in the case was whether a civil forfeiture violated the excessive fines clause of the eighth amendment, not double jeopardy. *Austin*'s analysis was also heavily derived from the historical understanding of forfeiture as serving a punitive purpose. Since administrative license suspension, in contrast, has long been viewed as a remedial safety measure,[3] the decision below does not conflict with *Austin*.

While *Kurth Ranch* did address the question of double jeopardy in successive civil and criminal proceedings, it did not refer to *Halper*'s "solely remedial" language. Instead, this Court expressly stated that a deterrent purpose is not dispositive of the question of punishment, thereby appearing to disavow *Halper*'s suggestion to the contrary.

Nothing else in *Kurth Ranch* conflicts with the decision of the Connecticut Supreme Court. The petitioner grossly misreads the statement that "the legislature's description of a statute as civil does not foreclose the possibility that it has a punitive character"; 114 S. Ct. at 1945; as the equivalent of a statement that any punitive characteristic renders a civil statute punitive for double jeopardy purposes. Since *Kurth Ranch* expressly stated the contrary, it is the petitioner rather than the Connecticut Supreme Court who has misinterpreted it.

---

[3] *See e.g.*, *Mackey v. Montrym*, 443 U.S. 1, 99 S.Ct. 2612 (1979); *Heddan v. Dirkswagen*, 336 N.W.2d 54 (Minn. 1983); *State v. Hanson*, 532 N.W.2d 598 (Minn. Ct. App. 1995).

There is no conflict between the decision below and the three cited decisions of this Court.

B. The Conflict Between the Decision Below And *United States v. Ursery* Will Be Resolved When the Court Reviews The Latter Case

It is true that the decision of the Connecticut Supreme Court conflicts with three federal decisions which adopted *Halper*'s "solely remedial" language as the test for punishment in the civil context. *United States v. Ursery*, 59 F.3d 568 (6th Cir. 1995), *cert. granted*, __ U.S. __, 116 S.Ct 762 (1996); *United States v. $405,089.23 in United States Currency*, 56 F.3d 41 (9th Cir. 1995), *cert. granted*, __ U.S. __, 116 S.Ct. 762 (1996); *United States v. Hudson*, 14 F.3d 536 (10th Cir. 1994). However, *Ursery*, and *$405,089.23*, are under presently under review by this Court and the Court's forthcoming decision will presumably resolve the conflict. Accordingly, review of the same issue in this case is unnecessary.

C. The Importance Of This Case Is Diminished By The Unanimity Of State And Federal Courts With Respect To The Remedial Character Of Regulatory Sanctions Involving Loss Of License Or Debarment

Whether the test for punishment in the civil context is "solely remedial" or "rational relationship", regulatory sanctions that suspend a license or otherwise debar the offender from an activity affecting public safety or welfare have consistently been held not to constitute punishment under *Halper*. *United States v. Hudson*, 14 F.3d 536, 541-42 (10th Cir. 1994)(debarment from banking activities); *United States v. Newby*, 11 F.3d 1143,

1145 (3d Cir. 1993), *cert. denied*, ___ U.S. ___, 115 S.Ct. 111 (1994)(prison disciplinary sanctions); *United States v. Bizzell*, 921 F.2d 263, 267 (10th Cir. 1990)(debarment from participation in federal housing programs; *United States v. Furlett*, 974 F.2d at 839, 844 (7th Cir. 1992)(ban on commodities trading); *Manocchio v. Kusserow*, 961 F.2d 1539, 1542 (11th Cir. 1992) (suspension of doctor from Medicare participation); *United States v. Woods*, 949 F.2d 175, 177 (5th Cir. 1991), *cert. denied*, 503 U.S. 961, (1992)(placement of mismanaged savings and loan into receivership); *Chukwarah v. United States*, 813 F.Supp. 161, 167 (E.D.N.Y. 1993) (deportation of convicted alien); *Schillerstrom v. State*, 885 P.2d 156, 158-59 (Ariz. Ct. App. 1994)(revocation of chiropractic license); *State v. Walker*, 646 A.2d 209 (Conn. App. Ct. 1994) (prison disciplinary measure); *Moser v. Richmond City Bd. of Commrs.*, 428 S.E.2d 71, 72 (Ga. 1993)(revocation of license to operate spa); *Loui v. Board of Medical Examiners*, 889 P.2d 705 (1995)(suspension of medical license); *Alexander v. La. State Bd. of Medical Examiners*, 644 So.2d 238, 244 (La. Ct. App. 1994)(suspension from practice of medicine); *Malone v. State*, 864 S.W.2d 156, 159 (Tex. Ct. App. 1993) (termination of parental rights).

Similarly, virtually every state appellate court that has considered the double jeopardy implications of administrative suspension of drivers' licenses after an arrest for drunk driving has concluded that the sanction does not constitute punishment. *State v. Zerkel*, 900 P.2d 744 (Alaska App. 1995); *State v. Nichols*, 819 P.2d 995 (Ariz. Ct. App. 1991); *Snow v. Superior Court*, 903 P. 2d 628 (Ariz. App. 1995), *rev. denied*, Sept. 26, 1995; *Baldwin v. DMV*, 35 Cal. App. 4th 1630 (Ct. App. Cal. 1995); *Ellis v. Pierce*, 230 Cal. App. 3d 1557 (Ct. App. 1991);

Freeman v. State, 611 So. 2d 1260, 1261 (Fla. Dist. Ct. App. 1992), *review denied*, 623 So. 2d 493 (1993)(per curiam), *cert. denied*, __ U.S. __, 114 S.Ct. 415 (1993); *State v. Murray*, 644 So. 2d 533 (Fla. Ct. App. 1994); *Nolen v. State*, 463 S.E.2d 504, (Ga. App. 1995), *review denied*, January 26, 1996; *State v. Higa*, 897 P.2d 928 (Ha. 1995); *State v. Talavera*, 1995 WL 644091 (Idaho); *People v. Dvorak*, 658 N.E. 869 (Ill App. Ct. 1995); *State v. Funke*, 531 N.W.2d 124, 126-27 (Iowa 1995); *State v. Mertz*, 907 P.2d 847 (Kan. 1995); *Butler v. Dept. of Public Safety and Corrections*, 609 So.2d 790 (La. 1992); *Luk v. Com.*, 658 N.E.2d 664 (Mass. 1995); *State v. Savard*, 659 A.2d 1265 (Me. 1995); *State v. Mayo*, 915 S.W. 2d 758 (Mo. 1996); *State v. Jones*, 666 A.2d 128 (Md. Ct. App. 1995), *cert. denied*, __ S.Ct. __, 1996 W.L 26460; *Johnson v. State*, 622 A.2d 199 (Md. Ct. Spec. App. 1993); *State v. Kennedy*, 904 P.2d 1044 (N.M. 1995); *State v. Hanson*, 532 N.W. 2d 598 (Minn. Ct. App. 1995), *aff'd*, 543 N.W.2d 84 (Minn. 1996); *State v. Hansen*, 542 N.W. 2d 424 (Neb. 1996); *State v. Young*, 530 N.W.2d 269 (Neb. App. 1995), *aff'd*, 1996 W.L. 100025 (Neb.); *State v. Zimmerman*, 539 N.W. 2d 49 (N.D.1995); *State v. Sims*, 1995 WL 493291 (Ohio Ct. App.); *State v. Miller*, 1995 WL 275770 (Ohio Ct. App.)[4]; *Ex Parte Arnold*, 916 S.W. 2d 640 (Tex. Ct. App. 1996); *State v. Arnold*, 909 P.2d 1270 (Ct. App. Utah 1996); *Tench v. Com.*, 462 S.W.2d 922 (Va. Ct. App. 1995); *State v. Becker*, 669 A.2d 548 (Vt. 1995); *State v. Strong*, 605 A.2d 510 (Vt. 1992); *State v. Phillips*, 909 P.2d 882 (Or. App. 1996).[5]

---

[4] *But see*, *State v. Gustafason*, 1995 W.L. 387619 (Ohio Ct. App.).

[5] As the citations indicate, only a few of these decisions predate *Austin* and *Kurth Ranch*, contrary to the petitioner's assertion. Pet. at 10. The (continued...)

These cases acknowledge a distinction between deterrence which is prospective--that is, directed toward protecting the public from future misconduct--and that which is punitive or directed toward past conduct. *See also, United States v. Assortment of 89 Firearms*, 465 U.S. 354, 364 (1984); *Mackey v. Montrym*, 443 U.S. 1, 18 (1979). This distinction arises from the fact that a licensed activity --whether it be driving, trading commodities or practicing medicine-- implicates the safety or welfare of the public. It is implicit in the issuance of a license that the license may be suspended or revoked if the licensee abuses it and thereby threatens the public safety or welfare. Thus, the element of deterrence always operates on the holder of a license. Yet, if the license holder refrains from misconduct, such deterrence serves to advance public welfare rather than the separate goals of retribution and punishment. *See State v. Zerkel*, 900 P.2d at 753-57; *State v. Hansen*, 542 N.W. 2d at 433-34; *Luk v. Com.*, 658 N.E. 2d at 672; *State v. Hanson*, 532 N.W.2d at 603-05 (Randall, J., concurring specially).

Thus, unlike the deterrent effect of the large fine in *Halper*, which was wholly unrelated to the legitimate purpose of compensating the government, the deterrent effect of a license, or the suspension thereof, is rationally related--and actually advances-- the remedial goal of a regulatory statute. Accordingly, non-compensatory or regulatory sanctions that can fairly be said to advance public safety or welfare are remedial despite their obvious deterrent effect.

---

[5](...continued)
decisions of federal district courts cited by the petitioner appear not to have reached the appellate level to date.

Applying this reasoning, a number of the decisions dealing with administrative license suspension following an arrest for drunk driving have stated or suggested that, because of its regulatory character, the sanction satisfies the "solely remedial" test. *State v. Zerkel*, 900 P.2d at 754; *State v. Mertz*, 907 P.2d at 856; *State v. Savard*, 659 A.2d at 1267-68; *State v. Hanson*, 532 N.W.2d at 603-04 (Randall, J., specially concurring); *State v. Hansen*, 542 N.W. 2d at 432-33; *State v. Kennedy*, 1995 WL 627711 at 11-12. Similarly, *United States v. Hudson*, 14 FD.3d 536 (10th Cir. 1994) adopted the "solely remedial" test for punishment, but the Court nevertheless found the debarment of the defendant from banking activities to be a remedial measure enacted solely for the protection of the public. *See also United States v. Bizzell*, 921 F.2d at 267.

In the context of regulatory sanctions, then, the distinction between measures which are "solely remedial" and those that have a component of deterrence is not dispositive of the question of punishment. Despite some conflicting interpretations of *Halper's* test for punishment, the great majority of courts are in agreement that regulatory sanctions designed to advance public welfare rather than to vindicate monetary or private interests are not punitive. In this context, then, there is no pressing need for further guidance from this Court.

CONCLUSION

For the foregoing reasons, the State of Connecticut urges this Court to deny the petition for a writ of certiorari.

Respectfully submitted,

STATE OF CONNECTICUT

John M. Bailey
Chief State's Attorney

Counsel of Record:

CAROLYN K. LONGSTRETH
Assistant State's Attorney
Appellate Bureau
Office of the Chief
State's Attorney
300 Corporate Place
Rocky Hill, CT 06067
(860) 258-5807

April, 1996